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FOURTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED
EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF
RESTRICTIVE BUSINESS PRACTICES
Geneva, 25-29 September 2000
Agenda item 6 (b) of the provisional agenda

SAN JOSE DECLARATION

The Regional Seminar on Competition Law and Policy for Latin America and the Caribbean, held in San José, Costa Rica, from 30 August to 1 September 2000 within the framework of the preparatory process for the Fourth Review Conference, pursuant to paragraph 6 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its second session,[1] adopted the San José Declaration annexed hereto for submission to the Fourth Review Conference.

[1] Report of the Intergovernmental Group of Experts on Competition Law and Policy on its second session (TD/B/COM.2/19-TB/B/COM.2/CLP/14).

SAN JOSE DECLARATION

The Regional Seminar on Competition Law and Policy for Latin America and the Caribbean was held in San José, Costa Rica, from 30 August to 1 September 2000, as part of the preparatory process for the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in cooperation with the Costa Rican Commission for the Promotion of Competition, the United Nations Conference on Trade and Development (UNCTAD) and the Economic Commission for Latin America and the Caribbean.

The Seminar was attended by representatives of 26 countries from the region, representatives of international organizations, including the World Trade Organization, the Inter-American Development Bank, the Andean Community, the Caribbean Community and the Caribbean Common Market, and international bodies such as Consumers International and the International Chamber of Commerce, representatives of international cooperation agencies and representatives of the public and private sectors in Costa Rica.

The Seminar examined various questions relating to national, regional and multilateral competition policies and discussed in depth the extent to which globalization influenced competition policy in different countries. It also examined the relationship between competition and economic development.

Several participants expressed interest in studying the content of a possible multilateral agreement on competition. The following subjects were among those mentioned: supranationality, general standards and principles, sectoral coverage, cooperation mechanisms (including technical cooperation) and special and differential treatment.

All participants found the presentation of case studies on the development of competition law and its implementation rewarding. The relevance of historical tradition and the fact that the countries of the region shared a common culture were emphasized as they provided the context that defined the content and implementation of competition law.

In addition, there was a discussion on the experiences of countries in the high technology, tourism, telecommunications and energy sectors, which highlighted the benefits of competition. The discussion brought out the common experiences in investigative procedures and, in particular, the relationship between competition authorities and regulatory bodies for public services. In the discussion on the relationship between competition and consumer protection, the importance of having a legal framework to protect the consumer was highlighted. The Seminar also afforded the opportunity for a very fruitful exchange of views on the relationship between competition policy and intellectual property.

Finally, within the framework of the objectives of the seminar, participants agreed to make the following recommendations:

- Practical proposals should be drawn up to encourage cooperation between the various authorities in the region. In particular, it is necessary to set up permanent communications systems between the authorities, focusing on the exchange of information on experiences with institution-building and on cases of mutual interest.

- UNCTAD should, in accordance with paragraphs 140 to 143 of the UNCTAD X Plan of Action:

  - Support competition advocacy programmes;

  - Conduct studies to identify the benefits of competition policy for countries' economic development;

  - Help Governments to ensure that any multilateral agreement on competition reflects the needs of the developing countries, particularly those with small and vulnerable economies;

  - Seek out regional cooperation options to combat cartels.

- UNCTAD should study the effects of competition on micro-economies (such as those of the small islands in the Caribbean). It should also analyse the benefits that a competition policy should deliver, especially with regard to foreign investment.

- UNCTAD should support efforts to advise on and coordinate competition policies in the relevant regional forums.

- UNCTAD should study the use of and the reasons for sectoral exceptions in competition legislation, and should assess their effects on both developing and developed countries.

- The main objective of competition law should be to protect consumers' interests.

- UNCTAD should explicitly include consumer protection and unfair competition in its studies.

- That organization should also undertake more studies on the relationship between competition law and intellectual property, particularly with reference to the international exhaustion of rights, compulsory licensing and the balance between static efficiency and dynamic efficiency.

- The effectiveness of training and technical cooperation should be improved through monitoring and peer reviews carried out by similar competition authorities, by setting up regional forums.

- Moreover, UNCTAD should include the subject of competition law and policy in the terms of reference of the regular training courses envisaged in paragraph 166 of the Bangkok Plan of Action. UNCTAD should develop a curriculum on competition law and policy for use in postgraduate programmes in selected universities in the region.

- In the light of paragraph 140 of the UNCTAD X Plan of Action, UNCTAD should strengthen its technical assistance and training programmes, both for those countries that still have no competition law or consumer protection and for those that need to amend their existing legislation.

- Bearing in mind the wealth of experience the countries in the region have gained in recent years in controlling anti-competitive practices, UNCTAD should take stock of the cases with effects in more than one country in the region, the problems encountered in controlling those cases, the degree and efficiency of cooperation between competition authorities, those cases in which no success has been achieved and those sectors still affected by international cartels.

- UNCTAD should permanently monitor and periodically publish information on global mergers and acquisitions and their effects on competition.

The participants would like to thank the Costa Rican Commission for the Promotion of Competition for the excellent organization of the event and for its generous hospitality.